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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1964.

No. 4521

GENE RIDGEWAY,
Petitioner,

vs.

STATE OF ARKANSAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the Supreme Court of Arkansas.

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IN THE

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No. .....

GENE RIDGEWAY,
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vs.

STATE OF ARKANSAS,
Respondent.

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of Arkansas.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner Gene Ridgeway respectfully prays that a writ of certiorari issue to review the final judgment of the Supreme Court of Arkansas, on which a rehearing was denied May 24, 1965, affirming a final judgment of the Circuit Court of Jackson County, Arkansas, entered on September 19, 1964, denying a Petition for Writ of Error *Coram Nobis* (or certiorari), seeking revocation of a pur-

ported conviction of this petitioner under a plea of guilty in said Circuit Court on September 5, 1955, of the crime of embezzlement of public funds and for which your petitioner was given a term of five years in the Arkansas State Penitentiary.

OPINIONS BELOW.

A memorandum opinion was filed by the Supreme Court of Arkansas which is reported as **Ridgeway v. State,** 239 Ark. 377, 389 S. W. 2d 617, and is set forth in the Appendix hereto at page A-12.

Another memorandum opinion of the Supreme Court of Arkansas invqlving this same petitioner and establishing a point of law at issue in this proceeding is reported as **Ridgeway v. Catlett, et al,** 238 Ark. 323, 379 S. W. 2d 277, and is set forth in the Appendix hereto at page A-6.

JURISDICTION.

The judgment of the Court below denying the Petition for *coram nobis* (certiorari) was entered on May 3, 1965. A timely petition for rehearing there was filed on May 6, 1965, and was by the Supreme Court of Arkansas denied without comment on May 24, 1965.

The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3) and Rule 19, Sec. 1 (a), of this Court.

QUESTIONS PRESENTED.

1. Is a written order, signed by the presiding trial judge, an essential precedent to legal conviction of petitioner of a crime and legal incarceration of his body in a prison?

2. Is it necessary that one accused of a felonious crime be told by the trial court, before being allowed to enter

without counsel a plea of guilty to the charge, that conviction carries with it permanent forfeiture of the accused's right to hold public office?

3. After the trial court has entered its written finding that at arraignment there is reasonable doubt about the sanity of the accused, may the trial court then legally proceed forthwith to allow the accused to enter without counsel a plea of guilty to a felonious crime and thereby deprive himself forever of the right to hold public office?

4. Does allowing one accused of a felonious crime to enter his plea of guilty without counsel, at a time when there is reasonable doubt as to his sanity, and without being told in advance that his plea of guilty will deprive him forever of any right to hold public office, represent a denial of due process within the meaning of Amendments 6 and 14 of the Constitution of the United States?

CONSTITUTIONAL PROVISIONS.

Amendment 6:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.—U. S. Const.

Amendment 14:

Sec. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge

the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.—U. S. Const.

STATEMENT OF THE CASE.

On May 21, 1955, while petitioner was holding the office of delinquent tax collector in and for Jackson County, Arkansas, he was indicted by Information of the Prosecuting Attorney (R. 29), and arrested for embezzlement of public funds. Petitioner was never told what law he was accused of violating. He was released under bond (R. 38).

On September 5, 1955, petitioner was arraigned in the Circuit Court of Jackson County, Arkansas, to plead to the aforesaid criminal charge (R. 38). He had no legal counsel at and during his arraignment.

Although there is a hand-written entry on the trial court docket sheet as of 9/5/55 to the effect that petitioner was arraigned, entered a plea of guilty, and was sentenced to 5 years in the State Pen and to the State Hospital for observation for 30 days, there is no written order of conviction and sentence signed by the trial judge. The commitment of this petitioner to the State Penitentiary is signed only by the Clerk of the trial court (R. 32).

There is in the trial court record a written order, signed by the presiding judge, finding that on September 5, 1955 —the day of arraignment—there was reasonable doubt about the sanity of this petitioner and committing him to the Arkansas State Hospital for a determination of his sanity (R. 40).

Following a period of observation at the State Hospital, the petitioner was taken forthwith to the Arkansas State Penitentiary and there incarcerated to serve out a sen-

tence of five years without ever being returned to the Circuit Court in Jackson County for a hearing as to his sanity. He has not been afforded such a hearing to this date.

After having served out the usual portion of his 5-year term in prison, petitioner was released on parole; and late in 1959 he was granted a full and complete pardon by the Governor of Arkansas.

In 1964 petitioner sought to become a candidate for the office of Governor of Arkansas in the regular Democratic Primary Election. He was denied a place on the ballot on the grounds that his conviction of embezzlement of public funds as of September 5, 1955, made him forever ineligible to hold public office in Arkansas under the provisions of **Art. 5, Par. 9, Ark. Const.** The Supreme Court of Arkansas, in a case of first impression, sustained this contention and barred petitioner from ever seeking public office again, despite his full pardon. **Ridgeway v. Catlett, et al.**, 238 Ark. 323, 379 S. W. 2d 277. This decision appears in its entirety in the Appendix hereto at page A-6. It was delivered on June 1, 1964.

On July 16, 1964, petitioner filed in the Circuit Court of Jackson County, Arkansas, in the same proceeding in which he had been convicted on September 5, 1955, his petition for a writ of error *coram nobis* (certiorari), seeking to revoke and set aside his conviction of September 5, 1955 (R. 1-5). That petition alleged, among other things, the following:

> "The action of this Court in thus accepting a plea of guilty from defendant violated the defendant's rights and violated due process of law as defined by Article 2, Section 10, Constitution of Arkansas; Amendment No. VI to the Constitution of the United States; and Amendment No. XIV to the Constitution of the United States" (Par. 2).

This petition appears in the Appendix hereto at page A-1.

The trial Court, in denying the petition, did not allude in any manner to the federal constitutional provisions pled and relied upon by petitioner. The trial Court's order is set out in the Appendix hereto at page A-10.

The order of the Jackson County Circuit Court was duly appealed to the Supreme Court of Arkansas for review. In his printed abstract and brief filed with the Supreme Court of Arkansas, petitioner said:

> "Petitioner is basing his right to the relief sought upon Article 2, Section 10, Constitution of Arkansas, 1874; Amendment 6 to the U. S. Constitution and Amendment 14 to the U. S. Constitution" (page 33).

In its decision, affirming the order of the trial Court, the Supreme Court of Arkansas found no merit in petitioner's reliance upon federal constitutional provisions or on federal court decisions cited. **Ridgeway v. State**, 239 Ark. 377, 389 S. W. 2nd 617. This decision appears in the Appendix hereto at page A-12. It became final when a petition for rehearing was denied on May 24, 1965, without comment (R. 129).

The petition for rehearing in the Supreme Court of Arkansas is set out in the Appendix hereto at page A-19. It again called the attention of that Court to petitioner's rights under federal law. This petition was denied without comment (R. 129).

The practical problem facing this petitioner is reasonably simple. Nine years after being allowed to plead guilty to a felonious crime without counsel and under circumstances which caused the trial judge to question his sanity with an official order committing him to the State Hospital for observation, this petitioner learned for

the very first time that a part of his punishment for the crime to which he pleaded guilty is permanent forfeiture of his right as a citizen to seek and hold public office, notwithstanding a full pardon.

Should the record of that purported conviction of a felony under a plea of guilty be revoked and set aside so that petitioner may yet have his day in Court with a full understanding of the charge against him and of the penalties that conviction will carry?

REASONS FOR GRANTING CERTIORARI.

I. Failure or refusal by a trial Judge to sign a formal written order of conviction and sentence of the accused is a denial of due process.

At the Circuit Court trial of petitioner's prayer to revoke and set aside his conviction of September 5, 1955, counsel stipulated that Exhibits Numbered 1 through 7 introduced into evidence represented "the entire written record of the proceedings in this Court" relative to the indictment and conviction of petitioner (R. 27-28). Those numbered exhibits appear in numerical order in the Record at pages 29-40. The purpose of this stipulation was to prove the total absence from the trial Court record of any formal, written judgment of conviction and sentence bearing the signature of the presiding Judge.

The only approach to such a formal, signed judgment is an "Order" (R. 34) marked "Exhibit 4, Front," in which the trial Judge, over his signature, found that "there is reasonable doubt about the sanity of the defendant" and committing him to the State Hospital for observation. This Order is dated September 5, 1955; but it does not purport to fix any time for imprisonment in the State Penitentiary as punishment of petitioner for any crime committed. This Order was entered on the day of peti-

tioner's arraignment and, apparently, just after he had been allowed to plead guilty to a felony.

The liberty and good name of an American citizen, together with his right to seek and hold public office, are regarded under our Way of Life as highly precious privileges to be jealously guarded. Any kind of orderly conduct of criminal courts having the power to deprive an accused of these precious rights would seem to include the entry of a written judgment of conviction and sentence signed by the presiding Judge. Failure or refusal to establish such a record is a denial of due process.

Until a judgment is entered of record there is no competent evidence of its rendition. **Ellis v. Florida,** 129 So. 106, 69 A. L. R. 783. Whether an accused is found guilty or not, judgment should be in writing signed by the judge. **Echtle v. Card** (Wash.), 268 P. 869, 59 A. L. R. 519. Also see 15 Am. Jur. 103, Par. 443, entitled **Contents of Judgment.**

II. Before an accused may be allowed to plead guilty without counsel to a felony charge, he must be told that part of his punishment will be permanent forfeiture of his right to hold public office.

After his arrest on May 21, 1955, and before his arraignment on September 5, petitioner made repeated efforts to hire an attorney to represent him (R. 42-43). The lawyer approached by petitioner, who was allowed to testify in this proceeding over the objections and exceptions of petitioner (R. 75-76), was asked if he regarded himself as having been employed by petitioner; and his reply was, "No, because I hadn't been paid" (R. 72). This same lawyer was asked if he represented petitioner at and during his arraignment; and the attorney replied, "No, I won't say right then because I hadn't been paid and I wasn't performing any functions; I was sitting here in the courtroom on that day" (R. 75). It is conclusive,

therefore, that petitioner faced his arraignment on September 5, 1955, without counsel.

The presiding judge of September 5, 1955, testified at length as to how he explained to petitioner at his arraignment all about his rights (R. 78-81). But nowhere did this Judge ever say that he told petitioner a part of his punishment, under a plea of guilty, would be loss forever of his right to seek or hold public office. One very cogent reason for this failure by the Court to inform the accused is the fact that the trial Judge himself could not possibly have known such a result would follow. The arraignment occurred on September 5, 1955; but pronouncement by the Supreme Court of Arkansas that one convicted of a felony could never again seek or hold public office even after a full pardon did not first come into existence until June 1, 1964—almost nine years later. **Ridgeway v. Catlett**, 238 Ark. 323, 379 S. W. 2d 277 (App. A-6).

The fundamental right of an accused to be informed of the nature of the crime with which he is charged has usually been regarded as including the right to be informed of the consequences of a conviction thereof; and the Court is required to determine, before receiving a plea of guilty, that the accused does understand the consequences of making such a plea. 97 A. L. R. 2d 552, Par. 3. A Court to which a plea of guilty is offered must be especially careful if the accused is not represented by counsel to see that the plea is not ignorantly made. 97 A. L. R. 2d 562, par. 5.

An accused who is entitled to assistance of counsel in the making of a plea of guilty can waive that right only if he acts intelligently and with knowledge of all the facts. The requisite intelligence and knowledge of facts necessarily embrace awareness and appreciation of the consequences of such a plea. 97 A. L. R. 2d 563 (b).

In this regard, Sec. 43-2305, Ark. Stats., 1947, is very pertinent. It provides that:

> "The law in relation to the punishment, pains and penalties of all persons when convicted, so far as relates to them, and the sentence, shall be read to each convict, and the consequences fully declared to him, so that such person so convicted and sentenced shall in no instance be deemed ignorant of the sentence pronounced on him."

This Court has held that the record below must show that an accused was offered counsel but intelligently and understandingly rejected the offer. **Carnley v. Cochran**, 369 U. S. 506, 82 S. Ct. 884.

Even if this petitioner were offered court-appointed counsel at the time of his arraignment, as the trial judge testified (R. 79-81), he was in no position to make an intelligent and understanding waiver of the offer when he had no information as to the possible consequences of a plea of guilty.

When the Supreme Court of Arkansas on June 1, 1964, first declared that one convicted of a felonious crime but later pardoned is thereafter forever ineligible to seek or hold public office, this petitioner found himself in exactly the same position as if the legislative power of Arkansas had been used to adopt an *ex post facto* law to the same effect. It was about nine years too late for him to learn what a terrible price he must pay for a plea of guilty entered back on September 5, 1955.

It appears that one of the major functions of the *Coram Nobis* writ is to correct errors which are not really any fault of the Court. The presiding Judge of the trial Court is not now being censured because he did not tell this petitioner what the Judge could not possibly have known. This is a resort to *Coram Nobis* as the only available means by which a manifest injustice already done unwittingly to this petitioner can be undone.

III. Acceptance of a plea of guilty from an accused without counsel on the same day the Court finds there to be reasonable doubt as to his sanity is a denial of due process.

Petitioner was arraigned under the felonious charge of embezzlement of public funds on September 5, 1955 (R. 38). On the very same day, the trial Judge signed this Order, to-wit:

> "Now on this 5th day of September, 1955, comes on for hearing the above captioned cause, and the matter is presented to the court on the information filed therein, the defendant's plea of guilty, and other things, matters, and proof before the court from all of which the court doth find:
>
> "That there is reasonable doubt about the sanity of the defendant and that same may be an excuse for the crime of embezzlement, and that he should be committed to Arkansas State Hospital for observation to determine his mental competency.
>
> "Wherefore, it is considered, ordered, and adjudged, that the defendant be taken by the Sheriff to the State Hospital and by them observed to determine his sanity now and at the time of the crime for some time not in excess of 30 days. In the event he is found sane the Sheriff is directed to transport the defendant to the State Penitentiary" (R. 40).

Once having determined that petitioner's mental competency was questionable at the time of his arraignment, the trial Court's act in accepting from him a plea of guilty to a felony without benefit of counsel is indefensible. This is one of the most flagrant denials of due process that it is possible to imagine. An accused who is in no mental or emotional state to entertain any serious or important problem is, nevertheless, allowed without counsel to enter a plea of guilty which strips him for life of one of his most precious rights of citizenship—the right to hold office.

The Order quoted above also contains another vice. The last sentence says: "In the event he is found sane the Sheriff is directed to transport the defendant on to the State Penitentiary" (R. 40).

As a matter of fact, a Dr. J. J. Goss of the Arkansas State Hospital staff reported petitioner's condition as follows:

> "Diagnosis: Without psychosis.
>
> "It was the opinion of the examining physician, and the opinion rendered at the psychiatric case conference, that Gene Ridgeway was mentally competent and responsible for his acts at the time of their alleged commission.
>
> "It is further the opinion of the examining staff that Gene Ridgeway is mentally competent and responsible at the time of this mental examination" (R. 37).

Subsequent to the foregoing medical report, petitioner was, as directed by the trial Judge, transported directly on to the State Penitentiary.

This report by Dr. J. J. Goss, based in part upon the findings of other unnamed physicians at the State Hospital (R. 37), constituted the primary evidence upon which this petitioner was incarcerated in the penitentiary. Yet, petitioner was never afforded one opportunity to face or cross-examine these medical witnesses. The record does not disclose that petitioner even knew the report existed or what it contained. This procedure denied petitioner the right, guaranteed him by Amendment 6 to the U. S. Constitution, to be confronted with the witnesses against him.

There is a glaring fault in the psychiatric report quoted above and any attorney representing petitioner would have played upon it with telling effect. The report says that

petitioner was found to be sane and responsible "for his acts at the time of their alleged commission" (R. 37).

The plain truth is that at no place in the record is there one suggestion—much less a precise identification—of the time at which the "acts" complained of were allegedly committed. The staff of physicians examining petitioner in the State Hospital could not possibly have known whether they were seeking to establish his mental condition as of one week, one month, one year, or two years immediately prior to the examination.

In line with accepted practice in most jurisdictions, Sec. 43-1301, Ark. Stats., 1947, provides that in Arkansas "Whenever . . . the circuit judge has reason to believe that the defense of insanity will be raised on behalf of the defendant and will become an issue in the cause, **or shall be of the opinion that there are reasonable grounds to believe the defendant was insane at the time of the alleged commission of the offense with which he is charged, or has become insane since the alleged commission of such offense,** the judge shall postpone all other proceedings in the cause and shall forthwith commit the defendant to the Arkansas State Hospital for nervous diseases, where the defendant shall remain under observation for such time as the court shall direct, not exceeding one month . . . If the trial has already begun when the issue of insanity is raised, and the court deems it necessary for the proper administration of justice that a mistrial be declared, it shall be the duty of the judge to declare such mistrial, and then to proceed as herein provided" (Emphasis supplied).

The trial judge in this instance initiated a new and strange procedure. He did not forthwith commit the accused to the State Hospital for observation while holding other procedures in suspense. He did not declare a mistrial. Instead, the trial judge committed accused to

the State Hospital as a way-station on the trip to the penitentiary (R. 40). This is a procedure unknown to American jurisprudence and is a denial of due process under our federal Constitution.

IV. Allowing an accused to enter a plea of guilty without counsel to a felonious crime, at a time when the Court has reasonable doubts as to his sanity, without being told in advance that such a plea will bring permanent forfeiture of his right to hold public office, under conditions which prevent him from facing important witnesses against him, is a denial of due process of law and of other rights guaranteed the accused under Amendments 6 and 14 of the Federal Constitution.

According to petitioner Gene Ridgeway's recollection of September 5, 1955, as he stood before the Jackson County Circuit Court for arraignment, he was emotionally upset (R. 90) and had been for several weeks (R. 91). Ridgeway considered it quite likely that many things occurred in that courtroom during his arraignment proceedings which he did not then understand nor could now recall (R. 91).

Of even stronger import, the trial record contains the official finding of the Circuit Court as of September 5, 1955, that "there is reasonable doubt about the sanity of the defendant (petitioner)" (R. 40). In the same breath the trial Court ordered petitioner taken to the State Hospital for observation to determine his mental competency; and then, without ever looking back, ordered the prisoner taken directly on to the penitentiary "in the event he is found sane" at the State Hospital (R. 40).

In the teeth of its own misgivings as to petitioner's mental competency on this September 5, 1955, the Court then allowed him to enter, without counsel, a voluntary plea of guilty to the felonious crime of embezzlement.

And, neither before nor after that plea, was petitioner ever made aware that with this plea he had surrendered forever his right to seek and hold public office.

The predicament of almost any normal person arraigned without counsel before a criminal court is clearly explained by this Court in **Johnson v. Zerbst**, 304 U. S. 458, 463-464, where the question of whether an accused had waived his right to counsel was under consideration, to-wit:

> "Two. There is insistence here that petitioner waived this constitutional right. The District Court did not so find. It has been pointed out that 'courts indulge every reasonable presumption against waiver' of fundamental constitutional rights and that we 'do not presume acquiescence in the loss of fundamental rights.' A waiver is ordinarily a relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver of right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused."

Another interesting and pertinent statement by this Court relative to the need for lawyers by those accused of crime appears in **Gideon v. Wainwright**, 372 U. S. 335, 9 L. ed. 2d 799, 805, in these words:

> "Not only these precedents but also reason and reflection require us to recognize that in our adversary system of criminal justice, any person hailed into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute

are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."

CONCLUSION.

For all of the reasons stated, your petitioner urges that a writ of certiorari issue to the Supreme Court of Arkansas to review its judgment denying petitioner's application for a writ of error coram nobis (certiorari), seeking to revoke and set aside a purported conviction of petitioner for the crime of embezzlement.

WARD & MOONEY,

By LEE WARD,
Attorneys for Petitioner.

APPENDIX.

1. Petition for Writ of Error Coram Nobis.

In the
Circuit Court of Jackson County, Arkansas,
Criminal Division.

State of Arkansas,

Plaintiff,

vs. No. 1408.

Gene Ridgeway,

Defendant.

PETITION FOR WRIT OF ERROR CORAM NOBIS.

Comes defendant Gene Ridgeway through his attorneys and petitions the Court to issue a Writ of Error Coram Nobis setting aside and expunging from the records of this Court a certain purported conviction of this defendant for the alleged crime of embezzlement under date of September 5, 1955, and for reasons respectfully shows to the Court as follows:

-1-

Photostatic copies of all records and proceedings had and done in this matter prepared by the Clerk of this Court under her Certificate and Seal are attached to this petition, made a part hereof, and marked in the following manner:

Exhibit 1. Front: Information. Filed 5-21-55.
Back: Motion & Order Removing Defendant from Office. Filed 5-21-55.

Exhibit 2. Front: Bench Warrant for Def. Filed 5-21-55.

Back: Return of Warrant. Form for fixing amount of Bond for Def. Filed 5-21-55.

Exhibit 3. Front: Penitentiary Commitment for Defendant. Filed 9-5-55.

Back: Letter from Supt. State Hosp. on Defendant's Mental condition. Filed 9-30-55.

Exhibit 4. Front: Order committing Defendant to State Hosp. for observation. Filed 9-5-55.

Back: Order for Defendant's mother to visit him in State Hosp. Filed 9-15-55.

Exhibit 5. Front: Order for Defendant's mother to visit him in State Hosp. Filed 9-30-55.

Back: Report of Dr. J. J. Goss on mental condition of Defendant. Filed 9-30-55.

Exhibit 6. Front: Criminal Docket Sheet, Case #1408.

Back: Clerk's Certificate to Copies.

This defendant under date of September 5, 1955, was allowed without benefit of legal counsel to enter a plea of guilty to a felonious crime described as embezzlement and misappropriation of public funds in his capacity as a delinquent tax collector for Jackson County, Arkansas, said crime carrying with it a possible sentence of 21 years in the State Penitentiary and forfeiture of the defendant's right to hold public office in Arkansas forever, not-

withstanding said defendant, before his plea of guilty, told the Court he had desired counsel but was unable to employ an attorney because he was wholly without money or credit. After this statement by defendant in open court, the Court still did not appoint or offer to appoint a qualified attorney to consult and advise with him concerning his guilt and legal rights before accepting his plea of guilty. The action of this Court in thus accepting a plea of guilty from defendant violated the defendant's rights and violated due process of law as defined by Article 2, Section 10, The Constitution of Arkansas; Amendment No. VI to the Constitution of the United States; and Amendment No. XIV to the Constitution of the United States.

-3-

Although the crime of embezzlement and misappropriation of public funds is a bailable offense under the laws of Arkansas, Exhibit 2 (Back) to this petition shows that this defendant was never offered an opportunity to provide bail for his liberty and was thus unnecessarily impeded and prevented from exercising his best efforts to obtain counsel on his own volition. This action on the part of the trial court violated the defendant's rights and violated due process of law under the constitutional provisions hereinabove cited.

-4-

Although Exhibit 6 (Front) to this petition shows a docket entry of "9/5/55 D arraigned—plea of guilty—Sentence to State Pen. for 5 years to be taken to State Hosp. for observation for 30 days." the record of this proceeding does not contain a **judgment** of conviction and sentence. Exhibit 3 (Front) to this petition shows a "Penitentiary Commitment" of this defendant over the signature and seal of the Clerk of this Court; but nowhere in the record is there any **judgment** or other directive

signed by the Court authorizing any such commitment of the defendant. The commitment under which this defendant was actually incarcerated in the Arkansas State Penitentiary violates the defendant's rights and violates due process of law as defined in the constitutional provisions hereinabove cited and is void.

-5-

Exhibit 4 (Front) to this petition shows that of its own volition the Court on the day this defendant was allowed to enter his plea of guilty in this proceeding found reason to believe the defendant was possibly not capable of knowing the nature, gravity and effect of his plea of guilty and committed him to the State Hospital for observation. This action by the Court was no satisfactory or reasonable substitute for legal counsel and advice which defendant at that moment clearly needed and was entitled to have before his plea of guilty was accepted.

-6-

At no time prior to acceptance of his plea of guilty to the crime charged by this Court did the defendant ever have an opportunity understandingly and intelligently to accept or waive legal counsel by appointment of the Court.

-7-

In the case of **E. T. (Gene) Ridgeway v. Leon B. Cattlet et al.**, the Supreme Court of Arkansas for the first time considered the effect of a felony conviction upon the right of a citizen to hold public office in Arkansas. In its unanimous opinion of June 1, 1964, in subject case No. 5-3372, the Supreme Court held that because of his conviction of September 5, 1955, this defendant could never hold any public office again in Arkansas even though he held a valid pardon from the Governor of Arkansas as allowed by law. This defendant has acted with due diligence and reasonable speed in filing this petition.

Wherefore, petitioner Gene Ridgeway prays that this Court issue a Writ of Error Corum Nobis voiding and setting aside the purported conviction entered against him under date of September 5, 1955, and expunging said purported conviction from the records of this Court; that a certified copy of said Writ of Error Coram Nobis be filed with the chief executive officer of the Arkansas State Penitentiary and another with the Arkansas Board of Pardon and Paroles; and for all other proper and legal relief.

Ward & Mooney,
By /s/ Lee Ward,
Attorneys for Gene Ridgeway.

A true copy of the foregoing petition has been served upon the State of Arkansas by delivering one copy to the Honorable John Norman Harkey, Prosecuting Attorney, Batesville, Arkansas; one copy to the Honorable Philip Hout, Deputy Prosecuting Attorney, Newport, Arkansas; and one copy to the Honorable Bruce Bennett, Attorney General, Justice Building, Little Rock, Arkansas.

/s/ Lee Ward,
For Gene Ridgeway,
July 15, 1964.

Filed Jul. 16, 1964,
Irma Shoffner,
Chancery and Circuit Clerk,
Jackson County, Arkansas.

2. Opinion—Ridgeway v. Catlett

OPINION DELIVERED JUNE 1, 1964.

Supreme Court of Arkansas

No. 5-3372.

E. T. (Gene) Ridgeway, Appellant,

v.

Leon B. Catlett, Chairman, et al., Appellees.

Appeal from Pulaski Chancery Court, First Division; Murray O. Reed, Chancellor.

Reversed.

George Rose Smith, Associate Justice.

George Rose Smith, J. By filing the required pledges and paying his ballot fee the appellant, E. T. Ridgeway, qualified as a candidate for the nomination for the office of Governor in the coming Democratic primary. Thereafter it was brought to the attention of the appellees, the chairman and secretary of the State Democratic Central Committee, that Ridgeway had been convicted of the crime of embezzling public funds and might therefore be ineligible to hold public office. Arkansas Const., Art. 5, § 9. On May 20 the appellees notified Ridgeway that they would not allow his name to appear on the ballot as a candidate for Governor.

Ridgeway then filed this suit for a writ of mandamus to compel the appellees to perform the ministerial duty of certifying his name for inclusion on the ballot. By answer the appellees interposed Ridgeway's asserted ineligibility to serve as a defense to the suit. The chancellor sustained this defense and refused to issue the writ of mandamus.

The case presents two questions, both of public importance: First, is Ridgeway eligible to hold public office if he should be elected? Second, if he is in fact ineligible, is this the proper procedure for preventing him from becoming a candidate for the office?

Upon the first question we are unanimously of the opinion that Ridgeway is not eligible to hold public office. The language of Article 5, Section 9, is too clear to be misunderstood: "No person hereafter convicted of embezzlement of public money, bribery, forgery or other infamous crime shall be eligible to the General Assembly or capable of holding any office of trust or profit in this State."

The appellant argues that this section of the Constitution is inapplicable to him for the reason that in 1959 he received from the acting chief executive of the State a pardon which by its language purported to restore "all civil and political rights which were lost as a result of the conviction," and that therefore he is again eligible to hold public office.

This argument is without merit. Under the plain language of the Constitution it is the fact of conviction that disqualifies a person from holding public office. There is no intimation whatever that the pardoning power conferred on the Governor by Article 6, Section 8, is intended to permit such an act of clemency to supersede the clear mandate of Article 5, Section 9, which we have quoted. It is a familiar rule that where there is a specific provision, such as the disqualification that results from conviction of an infamous crime, such a provision must be given effect as against a general clause, such as the grant of the pardoning power. **Hodges v. Dawdy, 104 Ark. 583, 149 S. W. 656.**

Despite Ridgeway's ineligibility to hold public office, the second question is completely controlled by our deci-

sion in **Irby v. Barrett**, 204 Ark. 682, 163 S. W. 2d 512, a case directly in point. There, as here, the party chairman and secretary refused to certify Irby as a candidate (for state senator) because he had been convicted of embezzling public funds. There, as here, Irby brought suit for a writ of mandamus, which the trial court denied.

We reversed the decree, holding that the writ should be granted. We held that the party chairman and secretary do not have the judicial authority to determine that a candidate is ineligible to hold public office and for that reason to refuse to place his name upon the ballot. Our reasoning is clearly set forth in this paragraph from the opinion:

"If the chairman and secretary of the committee have the right to say that because of the decision of this court petitioner is ineligible to be a candidate for office, they may also say, in any case, that for some other reason a candidate is ineligible. For instance, it has been held by this court in many election contests that one must pay his poll tax; that he must do so after proper assessment in the time and manner required by law, and that otherwise he is not eligible even to vote, and unless he were a voter he could not hold office. So with other qualifications, such as residence. May this question be considered or decided by the chairman and secretary of the committee? It may be that such power can be conferred upon them by laws of this state or the rules of the party; but it is certain that this has not yet been done. If this can be done, and should be done, the door would be opened wide for corrupt and partisan action. It might be certified that a prospective candidate has sufficiently complied with the laws of the state and the rules of a political party to become a candidate, and, upon further consideration, that holding might be recalled; and this might be done before that action could be reviewed in a court of competent jurisdiction and reversed in time for

the candidate to have his name placed on the ticket. It would afford small satisfaction if, after the ticket had been printed with the name of the candidate omitted, he have a holding by the court that the name should not have been omitted.".

In discussing a similar ruling by the Supreme Court of Kentucky in **Young v. Beckham**, 115 Ky. 246, 72 S. W. 1092, we said:

"The Kentucky court did not consider the correctness of the committee's finding that Beckham was ineligible to be a candidate. That question was pretermitted and not even referred to, the opinion being based solely upon the question of the power of the committee to exclude the name of a candidate. In holding that the committee did not have this power it was there said: 'We are of the opinion that the committee had no right to raise the question of the appellee's eligibility to re-election to the office of governor. The governing authority of the party has no right to determine who is eligible under the laws of the land to hold offices. It can call primary elections and make proper rules for their government, but has no right to say who is eligible to be a candidate before the primary. The persons who are entitled to vote at the primary are the ones to determine who shall be selected as their candidate for a particular office. If the committee can say who is not eligible to be nominated as party's candidate for office, they can, on the very last day before the ballots are printed, refuse to allow a person's name to go on the ballot upon the pretext that he is ineligible, and thus prevent his name from appearing upon the official ballot. They could thus destroy one's prospect to be nominated, for the rules of procedure in courts are necessarily such that no adequate relief could be afforded the party complaining, if at all, until after the primary election had been held. If the committee or governing authority has the authority to decide the ques-

tion as to who is eligible to hold an office or be a candidate before a primary election, then they would have a discretion and judgment to exercise that could not be exercised by a mandamus. The most that could be done by such a writ would be to compel them to act upon the question.' ''

We think the Irby case to be sound and refuse to overrule it. Under the authority of that case the appellees, in their capacity as party officers, are not the proper persons to question Ridgeway's eligibility to hold office.

The decree is reversed and the cause remanded with directions that the writ be issued. This action is without prejudice to the institution of a proper proceeding.

3. Circuit Court Order.

In the Circuit Court of Jackson County, Arkansas,
Criminal Division.

State of Arkansas,

Plaintiff,

vs. No. 1408.

Gene Ridgeway,

Defendant.

ORDER.

On this 21st day of August, 1964, the above entitled cause comes on for hearing upon the petition of the defendant for a Writ of Error Coram Nobis, the plaintiff appearing by John Norman Harkey, Prosecuting Attorney, and by Attorney W. J. Arnold, Amicus Curiae, and the defendant appearing in person and by his Attorneys, Ward & Mooney, both parties announcing ready to proceed.

Thereupon, the petition of the defendant was submitted to the court for consideration and determination upon the

pleadings, exhibits, and the oral testimony of the defendant, Attorney Judson Hout, and Circuit Judge Andrew G. Ponder. And the court, being well and sufficiently advised as to all matters of law and fact arising herein, makes the following findings and order:

1. In open court counsel for the defendant dismissed and abandoned paragraph three of his petition herein. All other allegations in the defendant's petition remain for adjudication.

2. For a considerable time prior to September 5, 1955, the date on which this defendant entered a plea of guilty to embezzlement of public funds, he had the benefit of competent legal advice and counsel. Said defendant understandingly and intelligently waived his right to legal counsel at and during his arraignment.

3. Docket entries by and testimony at this hearing of the presiding judge of this court on September 5, 1955, show that an arraignment of this defendant was properly held and that the presiding judge did pronounce sentence upon the defendant. The absence of a written and signed judgment of conviction and sentence is not prejudicial to this defendant and deprived him of no right or privilege under the laws of Arkansas.

It is, therefore, by the court **Considered** and **Ordered** that the petition of the defendant herein for a Writ of Error Coram Nobis should be and it is hereby denied. The defendant objects and excepts to the findings and Order of the Court.

/s/ P. S. Cunningham,
P. S. Cunningham,
Circuit Judge on Exchange.

Filed:
Sept. 19, 1964,
Irma Shoffner,
Chancery & Circuit Clerk,
Jackson County, Arkansas.

4. Opinion—Ridgeway v. State.

OPINION.

Supreme Court of Arkansas.

Gene Ridgeway,
Appellant,
v.
State of Arkansas,
Appellee.
No. 5129.

Opinion Delivered May 3, 1965.

Certiorari to Jackson Circuit Court to Review Judgment Refusing Writ of Error Coram Nobis.

Writ Denied.

Ed. F. McFaddin, Associate Justice.

The present case is a sequel to **Ridgeway v. Catlett,** 238 Ark. (Adv. Sh.) 323, 379 S. W. 2d 277. That case was decided on June 1, 1964; and in it we said that since Ridgeway had been convicted of the crime of embezzling public funds, no executive pardon could restore to him eligibility to hold public office (Art. 5, § 9 of the Arkansas Constitution). As a direct result of that holding, Ridgeway filed, on July 16, 1964, in the Circuit Court of Jackson County, Arkansas, his pleading entitled, "Petition for Writ of Error *Coram Nobis,*" in which he sought to expunge from the records of that Court his conviction for said embezzlement. The conviction was based on a plea of guilty which Ridgeway made in open Court on September 5, 1955.

The regular Judge of the Jackson Circuit Court is Hon. Andrew W. Ponder. He exchanged circuits with Hon.

P. S. Cunningham, Chancellor of the 8th Chancery District; and Judge Cunningham presided over the hearing on this motion for writ of *error coram nobis.* Testimony was heard in open Court on August 21, 1964, the witnesses being Mr. Ridgeway, Hon. Judson Hout, an attorney of Newport, and Hon. Andrew Ponder, the Judge who accepted Ridgeway's plea of guilty and sentenced him to the penitentiary in 1955. At the conclusion of the hearing Judge Cunningham denied Ridgeway's petition for writ of *error coram nobis*, and from such judgment Ridgeway prosecutes the present proceeding to this Court which is really a petition for *certiorari.*

While the motion for writ of *error coram nobis* contained a number of allegations, all were waived by Ridgeway's present counsel when, at the opening of the trial on August 21, 1964 (from which trial comes the present appeal) Ridgeway's present counsel made the following statement:

> "We are relying on the allegations in paragraphs 2 and 6 where we allege that he was unable financially to obtain legal counsel of his own volition; and that he never at any time was afforded an opportunity understandingly and intelligently to waive Court appointed counsel. Legally, that is the whole substance of our lawsuit upon which we will make proof."

The evidence offered in the *coram nobis* hearing disclosed that: as early in 1947 Ridgeway was married and owned an equity in a home in Newport, Jackson County, Arkansas; he was in the furniture business in Newport for more than five months. he was also an honorary deputy sheriff; then he was in the taxicab business in Newport, having five taxicabs in his business; later he became the delinquent tax collector of Jackson County; and while in

that position an audit showed him to be several thousand dollars short in his accounts.

On May 21, 1955, an information was filed by the Prosecuting Attorney in the Jackson Circuit Court, charging: that Ridgeway, during the period he was delinquent tax collector, did unlawfully and feloniously use and appropriate funds belonging to the County of Jackson and to the various school districts therein for his own uses and purposes. On the same day of the filing of the information, the Circuit Court on the motion of the Prosecuting Attorney removed Ridgeway from office as said Tax Collector, pursuant to Ark Stat. Ann., § 41-3920 *et seq.* (1947). Ridgeway was arrested on May 21, 1955, and remained on bond until September 5, 1955, when he entered his plea of guilty and was sentenced to five years in the penitentiary.

After the plea of guilty and the sentence, Ridgeway's mother went to Judge Andrew Ponder and told him that she would never believe that her son could commit such a crime if he were in his right mind. So, in order to satisfy the mother Judge Ponder specified in Ridgeway's commitment to the penitentiary that he should be sent via the State Hospital for thirty days examination. Judge Ponder testified in the hearing in August 1964 that he never had any doubt of Ridgeway's sanity and he merely sent him to the hospital for examination and report in order to satisfy Ridgeway's mother, a very fine Christian woman. The hospital report was sent back to Judge Ponder and introduced in evidence in this case, and it showed Ridgeway to be perfectly sane. After thirty days in the State Hospital Ridgeway went on to the penitentiary and served enough of his sentence to be eligible for parole, and was later pardoned, as previously recited.

At the trial before Judge Cunningham in 1964, there was no claim that Ridgeway had ever been insane, so no issue of insanity is in this case. Among the points on

which Ridgeway relies there are: (1) that he was not represented by counsel when he entered his plea of guilty in 1955; and (2) that he was not able to employ counsel and did not understand that court appointed counsel would be furnished him free of charge. Of course, these claims of Ridgeway appear to us now as an afterthought. If this Court had held in **Ridgeway v. Catlett**, *supra*, that the pardon which Ridgeway received in fact restored him to eligibility to public office, then we feel confident that no writ of *error coram nobis* would ever have been considered or filed; and this leads us to a consideration of the real purpose and extent of a petition for writ of *error coram nobis*. In Howard v. State, 58 Ark. 229, 24 S. W. 8, we said of the writ of *error coram nobis*:

> "The office of the writ is to correct an error of fact in respect to a matter affecting the validity and regularity of the proceedings in the same court in which the judgment was rendered and where the record is, when the error assigned is not for any fault of the court; those errors which precede the judgment—as error in the process, or through default of the clerk; where an infant appears by attorney, and not by guardian; or died before judgment. And this writ has been sustained where the defendant was induced to plead guilty to a charge of felony through fear and by reason of the threats of a mob.
>
> "But it will not lie to contradict or put in issue any fact that has been already adjudicated in the action. An issue of fact wrongly decided is not error, in that technical sense to which the writ refers. If the error lie in the judgment itself, it must be corrected by appeal or writ of error to a superior court."

In **Mitchell v. State**, 234 Ark. 762, 354 S. W. 2d 557, we discussed in some length the matter of a writ of *error coram nobis* and cited some of our earlier cases. The writ is to correct mistakes of fact, not mistakes of law. If the Trial Court made any mistakes in having Ridgeway

sent to the State Hospital enroute to the penitentiary, then certainly that was a mistake of law and not susceptible to being considered on writ of *error coram nobis*. But the sending of Ridgeway to the State Hospital and the examination of Ridgeway by the State Hospital officials and the report to the Circuit Court certainly shows that any possible claim of Ridgeway's insanity was before the Circuit Court and cannot now be considered on petition for writ of *error coram nobis*. See **Mitchell v. State**, *supra*.

Ridgeway's first point is his claim that he was allowed to enter a plea of guilty without having a lawyer represent him; and in making this plea he seeks to bring himself under the holdings of such cases as **Dement v. State**, 236 Ark. 851, 370 S. W. 2d 191; **Carnley v. Cochran**, 369 U. S. 506, 8 L. Ed. 2d 70, 82 S. Ct. 884; and **Gideon v. Wainwright**, 372 U. S. 335, 9 L. Ed. 2d 799, 83 S. Ct. 792, 93 A. L. R. 2d 733. But the evidence in this *coram nobis* hearing clearly and without contradiction shows that Ridgeway stated in open Court that he did not desire an attorney to represent him when he was sentenced in 1955. Ridgeway testified on direct examination in the *coram nobis* hearing:

> "Q. Did the Court ask you if you had an attorney?
>
> "A. Yes.
>
> "Q. All right, if you remember, what did you tell him?
>
> "A. I said, 'No,' and he said, 'Well, the Court will appoint you an attorney.' And I said I didn't want an attorney, that I would act as my own attorney and throw myself on the mercy of the Court.' "

Then on cross-examination Ridgeway testified:

> "Q. So to recap it, if I do it correctly, the Court asked you if you wanted the Court to appoint you an attorney. You said that you didn't want an attorney, you couldn't afford it, anyway you would be your own

attorney and throw yourself on the mercy of the court.

"A. I don't think I said I couldn't afford it at that time, I am trying to recall exactly what was said and I am almost; well, I knew what was said that he asked me, the Judge asked me if I wanted an attorney; I said I did not want an attorney, that I would act as my own attorney and throw myself on the mercy of the court.

"Q. There was no conversation then between you and the Judge with respect to the fact that you couldn't afford an attorney. You merely stated you didn't want an attorney, you would act as your own attorney and throw yourself on the mercy of the court?

"A. I don't remember any conversation, Mr. Harkey.

"Q. Did I state correctly what took place?

"A. Yes.

"Q. Mr. Ridgeway, just a few more questions. First, so the record will be perfectly clear: There was no conversation now on the date of sentencing between you and Judge Ponder about you couldn't afford an attorney?

"A. Between Judge Ponder and myself?

"Q. That is right.

"A. No, sir."

Hon. Judson Hout, who had represented Ridgeway in other matters, testified that Ridgeway told him in 1955 that he (Ridgeway) had decided he did not want an attorney because he was going to plead guilty and throw himself on the mercy of the Court. Judge Andrew Ponder, who accepted Ridgeway's plea of guilty and gave him the minimum sentence in 1955, testified in this *coram nobis* hearing that before he accepted Ridgeway's plea he told him (Ridgeway) in open Court that the Court would appoint him an attorney who would serve free of charge; and that Ridgeway stated in open Court that he

did not want an attorney because he was guilty and wanted to throw himself on the mercy of the Court.

Thus, Ridgeway and the other two witnesses all agree that before Ridgeway entered his plea of guilty in 1955 he was offered counsel and refused the same. Under these facts, Ridgeway does not bring himself under the rule of the cases on which he relies.

Mr. Ridgeway's second point is that he did not understand that he would have a lawyer without cost, even if the Court might appoint one; and so he claims that he did not "intelligently and understandingly" refuse counsel. But the evidence preponderates against him on this point. Judge Ponder testified at length how Ridgeway came to him in chambers desiring to enter his plea, how Judge Ponder required him to appear in open Court, how the Court painstakingly and sympathetically discussed the case with Ridgeway in open Court, and how the services of free counsel were offered to Ridgeway and declined.

> "Q. And did you explain to him that under our system he could have a court appointed attorney free of charge if he desired?
>
> "A. I certainly did."

There is also presented a point that Hon. Judson Hout should not have been allowed to testify in the *coram nobis* proceedings because he had represented Ridgeway in other matters. There are several answers to this point, but only one need be mentioned. Mr. Ridgeway testified:

> "Q. Did Mr. Jud Hout represent you in that matter?
>
> "A. No, sir, he did not.
>
> "Q. In any conversation that you did have with Mr. Jud Hout did he ever suggest that you ought to enter a plea of guilty?
>
> "A. No, sir, he did not."

We conclude that the Trial Court was correct in denying the motion for writ of *error coram nobis.*

5. Petition for Rehearing.

In the Supreme Court of Arkansas.

Gene Ridgeway, Appellant,

vs. No. 5129.

State of Arkansas, Appellee.

PETITION FOR REHEARING.

Comes the appellant through his attorneys and respectfully petitions the Court to grant a rehearing in this cause for the following reasons, to-wit:

1. The opinion of the Court erroneously eliminated from consideration appellant's Point II based upon failure of the trial Court to enter a written signed order for conviction and sentence.

2. The opinion of the Court erroneously ignored appellant's plea that he could not have intelligently and understandingly waived counsel at his arraignment because on that occasion neither he nor the Court could possibly have known that a plea of guilty would forever forfeit appellant's right to hold public office in Arkansas.

3. The opinion of the Court erroneously finds that the issue of appellant's sanity as handled by the trial Court has no relation to the basic issue of whether appellant intelligently and understandingly waived counsel at his arraignment.

4. The holding of this Court in this cause represent a denial of due process to the appellant within the meaning of Amendments 6 and 14 to the Constitution of the United States.

Ward & Mooney,
By /s/ Lee Ward,
Attorneys for Appellant.

A true copy of the foregoing petition has been served upon the appellee by delivering the same to the office of

The Attorney General, Justice Building, Little Rock, Arkansas, its counsel of record, this 6th day of May, 1965. A printed brief will be filed in support of this petition.

/s/ Lee Ward,
Lee Ward,
Attorney.

I certify that in my judgment there is merit in this petition and it is not filed for the purpose of delay.

/s/ Lee Ward,
Lee Ward,
For Appellant.

Filed May 6, 1965, Philip N. Gowen, Clerk.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 452

GENE RIDGEWAY ..... *Petitioner*

v.

STATE OF ARKANSAS ..... *Respondent*

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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PARAGON PRINTING CO., LITTLE ROCK

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 452

GENE RIDGEWAY ..... *Petitioner*

v.

STATE OF ARKANSAS ..... *Respondent*

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

STATUTES INVOLVED

The statutory provisions involved are Arkansas Statutes, 1947, Sections 43-1301 and 43-2305. These enactments are printed in Appendix A, pp. 9-10.

CONSTITUTIONS INVOLVED

The Arkansas Constitution (1874) provisions involved are Art. 2, Sec. 10 and Art. 5, Sec. 9. The United States Constitution provisions involved are Amendments 6 and 14, Section 1. The provisions are printed in Appendix A, p. 11.

STATEMENT OF CASE

Petitioner entered a plea of guilty to the crime of embezzlement of public funds while serving as a Delinquent Tax Collector of Jackson County, Arkansas, in 1955. He has served his time and received a pardon from the Governor.

Petitioner sought public office in 1964 by filing for the office of Governor in the Democratic Primary Election. This action set in motion a chain of events which resulted in the Arkansas Supreme Court ruling that under the Arkansas constitution, Art. 5, Sec. 9, Petitioner was ineligible to hold public office as a consequence of his embezzlement conviction in 1955.

Whereupon, Petitioner sought to have the embezzlement conviction set aside from the records of the Court by filing a Petition for Writ of Error Coram Nobis in the Jackson County Circuit Court. The Writ was denied in the Jackson County Circuit Court and an Appeal was taken to the Arkansas Supreme Court which also denied the Writ after treating it as a Petition for a Writ of Certiorari.

Although Petitioner sets forth several reasons for this Honorable Court to grant Certiorari, which reasons Respondent will answer separately, the main underlying issue is whether or not Petitioner has been denied his Federal Constitutional rights because he can not hold public office in the State of Arkansas due to his conviction of embezzlement in 1955.

ARGUMENT

I

Formal Written Order of Conviction and Sentence.

Petitioner has not been denied any constitutionally protected right or privilege which need be reviewed by this Honorable Court. In all of the criminal proceedings, the Petitioner was treated with due process of law.

The mere fact that there is an absence of a formal Order does not deny the Petitioner of due process of law in this case. A perusal of the entire record will reflect that at all times Petitioner's rights were being fully protected.

A perusal of the record will reflect that after the plea of guilty had been accepted, a penitentiary commitment was entered in the Criminal Docket which recites that the Petitioner was sentenced to five years in the Arkansas State Penitentiary by way of the Arkansas State Hospital (R.32), and in the Jackson County Criminal Court Record (Book T), there appears an Order signed by Judge Ponder (R.34).

The most any Court could make out of the proceedings and docket entries in this case is that Petitioner was afforded a hearing embedded with due process of law. A Judgment may be shown inferentially by the language of the entry and Courts look to substance and not form in deciding the issue. *Duben* v. *Montgomery,* 144 Ark. 153, 221 S.W. 855; *McNeese* v. *Raines,* 182 Ark. 1091, 34 S.W. 2d 225.

II

Forfeiture of Right to Hold Public Office.

There is no complete absence of a record judgment which would be a violation of due process. Petitioner could at any time obtain adequate information from the dockets to ascertain how his case had been settled.

Since the substance is the protective element and not the form, Petitioner has suffered no injury for which he has a remedy of Certiorari.

Petitioner seeks to have his old criminal conviction set aside at this late date on the weakest of arguments that some nine years later he was denied the political privilege of running for public office as a result of the conviction.

Petitioner seeks the irreconceivable ruling that failure by the trial Court to instruct him that he would be barred from holding public office due to a conviction is a denial of due process of law.

This could conceivably be a possibility in the Respondent's opinion, provided this was part of the penalty provided by the Arkansas Criminal Code for such a violation. On the contrary, this result is not part and parcel of the "punishment, pains and penalties . . . , and the consequences . . . " provided in Arkansas Statutes 43-2305 (1947). The Arkansas Constitution Art. 5, §9, Apendix A, p. 11, is the authority for denial of the political privilege and in Respondent's opinion does not deny Petitioner of due process of law. The Circuit Court would be required to explain all criminal penalties and consequences. However, the Court should not be required to

explain consequences involving civil and political overtones. This would leave the door open to those who could imagine consequences not explained but sure to result as a consequence of a conviction due to social prejudice and pressure. Due process does not require the Judge to speculate but to explain the cold hard facts surrounding the criminal aspects of the situation.

Petitioner states that he faced arraignment without counsel. In his attempt to show there was no valid waiver of counsel made, he neglects to point out conflicting testimony in the record which indicates that a plea was entered with a thorough understanding of the situation (R.65, 69-70, 72-73, 75, 77-81).

This testimony reflects that Petitioner's rights were regarded and protected so that he could act through knowledge and understanding.

III

Reasonable Doubt as to Insanity.

Petitioner seems to be under the belief that the question of sanity was seasonably interposed so as to bring himself under Arkansas Statute 43-1301 (1947), Appendix A, p. 9. The record will indicate that several discussions concerning the situation took place before Petitioner was allowed to be arraigned. At the time Petitioner was arraigned, he did not mention a word about using insanity as a defense nor did any other person have the slightest indication that such a defense would ever be interposed.

Petitioner received his instruction, entered his guilty plea, and was sentenced. His mother proceeded to acknowledge her concern to the trial judge in chambers.

The issue of insanity was never put before the Court in a proper manner and the Court was under no duty to act in regard to such issue. But to dispel any misgivings a mother might possess about her wayward son, the trial judge included in his Order a procedure whereby Petitioner could be sent to the Arkansas State Hospital for a mental examination (R.83-86).

Petitioner now seeks to establish that his arraignment lacked due process under the 14th Amendment to the United States Constitution and that he had not been confronted with the medical witnesses who declared him without psychosis and mentally competent as provided by the 6th Amendment to the United States Constitution.

Petitioner does not stop to realize that an issue of insanity has not been properly placed before the Court, but was entered as a further protection of Petitioner's rights voluntarily by the Court.

In fact, Arkansas Statute 43-1301 (1947), which Petitioner say was violated, was followed. There was no insanity plea and no reasonable grounds to believe insanity existed until after the sentencing. Now the trial Court postponed the proceedings in order to have the Petitioner examined, i.e., he sent Petitioner to the Arkansas State Hospital before sending him to the Arkansas State Penitentiary.

The Court was under no duty to have Petitioner examined since the plea of insanity was not properly interposed. *Whittington* v. *State,* 197 Ark. 571, 124 S.W. 2d 8.

The Petitioner should not be allowed now to complain of a denial of due process when his rights were protected even when improperly presented to the Court.

IV

Acceptance of Guilty Plea and Hospital Examination Not a Denial of Due Process.

Petitioner's fourth ground for this Honorable Court granting the Writ of Certiorari is a combination of his second and third. This argument is cumulative and adds nothing new to his case.

Petitioner steadfastly clings to the position that the plea of insanity was seasonably interposed and thereby properly before the Court.

The record as previously stated represents that the Petitioner had been arraigned and sentenced before any mention of insanity had occurred. The Court accepted the guilty plea only after explaining about the right to counsel (R.83).

As this right may be waived, which was understandingly done using the test set out in *Johnson* v. *Zerbst*, 304 U. S. 458 (1938), the Court accepted the plea of guilty after being satisfied that such right to counsel was being validly waived.

Petitioner's rights were fully protected when the Court ordered a mental examination when such issue was never properly placed before the Court. Petitioner would like to have his Writ granted for an alleged error of an issue which never has been properly pleaded.

Respondent contends the Petitioner relies upon the frail argument that he was not warned that a conviction of embezzlement would deny him the political privilege of seeking public office. Respondent has already set forth the argument that this position is untenable.

CONCLUSION

Respondent submits that Petitioner has had his day in Court and which day safeguarded all of his Constitutional rights for which he has no ground for a Writ of Certiorari.

WHEREFORE, Respondents respectfully pray that the Petitioner's Petition for Writ of Certiorari be denied.

Respectfully submitted,

BRUCE BENNETT
Attorney General
State of Arkansas

BERYL ANTHONY, JR.
Assistant Attorney General
Attorneys for Respondents

APPENDIX

APPENDIX A

ARKANSAS STATUTES CITED

Sec. 43-1301. Procedure when sanity an issue — Costs charged to county. Whenever a prosecution for any crime has been instituted in the Circuit Court by indictment or information, and the defense of insanity at the time of the trial or at the time of the commission of the offense has been raised on behalf of the Defendant and becomes an issue in the cause, or the Circuit Judge has reason to believe that the defense of insanity will be raised on behalf of the Defendant and will become an issue in the cause, or shall be of the opinion that there are reasonable grounds to believe that the Defendant was insane at the time of the alleged commission of the offense with which he is charged, or has become insane since the alleged commission of such offense, the Judge shall postpone all other proceedings in the cause and shall forthwith commit the Defendant to the Arkansas State Hospital for nervous diseases, where the Defendant shall remain under observation for such time as the Court shall direct, not exceeding one month. The Judge shall order the superintendent or supervising officer of the state hospital to direct some competent physician or physicians employed by the state hospital to conduct observations and investigations of the mental condition of the Defendant, and to prepare a written report thereof. On issuing such order, the Judge shall direct the Circuit Clerk to notify the Prosecuting Attorney and the counsel for the Defendant of the issuance of the Order. If the Defendant is at large on bail, the Court shall commit him to custody during the period and for the purposes of the examination herein-

before provided. If the trial has already begun when the issue of insanity is raised, and the Court deems it necessary for the proper administration of justice that a mistrial be declared, it shall be the duty of the Judge to declare such mistrial, and then to proceed as herein provided. The action of the Court in committing the Defendant for examination shall not preclude the State or Defendant from calling expert witnesses to testify at the trial, and such expert witnesses shall have free access to the Defendant for the purposes of observation and examination during the period of his commitment to the state hospital for examination. A written report prepared by the physician or physicians employed by the state hospital shall indicate separately the Defendant's mental condition at the time of the alleged offense. This report shall be certified by the superintendent or supervising officer of the state hospital, under his seal, or by an affidavit duly subscribed and sworn to by him before a Notary Public who shall add his certificate and affix his seal thereto. The state hospital shall be reimbursed by the County for such observation at the same rate as that established for the maintenance of patients under the provisions of Act 241, Ark. Acts of 1943 (Ark. Stats. (1947) Section 59-230). Provided further, that no more than ninety (90) days shall be chargeable to any county for any person committed to the state hospital under the provisions of this act regardless of the total amount of time that such person shall be required to be under observation.

Sec. 43-2305. Procedure in pronouncing sentence. The law in relation to the punishment, pains and penalties of all persons when convicted, so far as relates to them, and the sentence, shall be read to each convict, and the consequences fully declared to him, so that such person

so convicted and sentenced, shall in no instance be deemed ignorant of the sentence pronounced on him.

CONSTITUTIONS CITED

Arkansas Constitution, Art. 2, Sec. 10. Rights of accused enumerated — Change of venue. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by impartial jury of the County in which the crime shall have been committed; provided that the venue may be changed to any other County of the judicial district in which the indictment is found, upon the application of the accused, in such manner as now is, or may be, prescribed by law; and to be informed of the nature and cause of the accusation against him, and to have a copy thereof; and to be confronted with the witnesses against him; to have compulsory process for obtaining witness in his favor, and to be heard by himself and his counsel.

Arkansas Constitution, Art. 5, Sec. 9. Persons convicted ineligible. No person hereafter convicted of embezzlement of public money, bribery, forgery or other infamous crime shall be eligible to the General Assembly or capable of holding any office of trust or profit in this State.

United States Constitution, Amendment 6. (Rights of the Accused.) In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

United States Constitution, Amendment 14, Sec. 1. (Citizenship — Due process of law — Equal protection.) All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.